AB 1784 Bill Analysis

Assembly Bill 1784 (Wolk)
Legislator disqualification: lobbyist/consultants

Version: As Introduced, July 15, 2003
Status: May be heard on or after August 15
Urgency measure

Summary
This bill would prohibit a state legislator who has a business relationship, as defined, with a lobbying entity (lobbyist, firm or employer) from participating in any decision on a matter in connection with which that lobbying entity has attempted to influence the legislator. The bill applies only to business relationships entered into on or after July 1, 2003.

The bill provides that a business relationship between a legislator and a lobbyist exists when:

- The legislator or any of her or his controlled committees has contracted for or paid the lobbyist or firm to act as a campaign professional.
- The legislator or her or his controlled committees has contracted for or paid a lobbyist or firm to provide legal or other professional services relating to the legislator's status or activities as an elected official, and those services provided during any quarter of the calendar year have a fair market value of one thousand dollars or more.

The bill would require recusal upon identification of a potential or actual conflict of interest, and would additionally require the legislator to state on the record the nature of the business relationship giving rise to the potential conflict. As an urgency statute, the bill would become effective upon the Governor's signature.

Background
This bill and AB 1785 (Frommer) were precipitated by a series of incidents involving a successful Democratic campaign consultant who is also a registered lobbyist. Newspaper articles reported that the lobbyist threatened members of the Assembly with retribution when next they face re-election unless they voted for a bill sponsored by one of the lobbyist's clients.

Analysis
These two companion measures have been characterized by the authors as "two halves of the walnut": AB 1784 deals with the prohibition on consultant-lobbyists attempting to influence their legislator clients, while this measure requires disqualification of legislators on issues related to which the lobbyist has failed to heed that prohibition.

Assembly Bill 1785 borrows language from the Political Reform Act's general financial conflicts-of-interest statute (section 87103), and employs it in the context of decisions rendered by legislators. Rather than disqualify a legislator on the basis of a source of income (which is the subject of existing Government Code sections 87102.5 and 87102.6), this new section would require disqualification where the legislator has a business relationship with a lobbyist, lobbying firm, or lobbyist employer who has attempted to influence the legislator on the matter in question. Violations of this new requirement are punishable by administrative, civil and criminal

remedies. Subdivision (c) of the bill makes it applicable to business relationships entered into on or after July 1, 2003.

Staff Analysis
Commission staff expressed the following concerns:

The bill applies in the context of "matters" on which a lobbying entity attempts to influence a legislator with whom the entity has a business relationship. Language to narrow the bill's prescriptions to "matters" limited to legislative action would be helpful.

Some clarification is needed to delineate "other campaign professionals" (subdivision (b)(1)), as well as "other professional services" (subdivision (b)(2)(A)).

The bill is short on the details of recusal (i.e., a definition of "on the record," whether orally or in writing, etc.). Baring clarification, the Commission would need to develop regulations.

Section 87102.7(a) and (b) refer to business relationships with "lobbyists, lobbying firms, and lobbyist employers," but subdivision (b), defining "business relationship," refers only to lobbyists and lobbying firms. This should be clarified.

The author may wish to consider exceptions from the bill's provisions where the only attempts to influence are in the form of mass letter writing appeals and legislative testimony.

The Commission may want to request language to deal with costs arising from litigation, in the event this enactment is challenged. The prohibition on lobbyist contributions enacted by Proposition 34 (Government Code section 85702), for instance, was unsuccessfully challenged by a lobbyist trade association in *Institute of Governmental Advocates v. FPPC*, 164 F.Supp. 2d 1183 (E.D. Calif 2001). While the Attorney General's Office may be available to defend the Commission at no charge in these actions, if plaintiffs prevail, costs and attorneys fees would be borne by our agency. For this reason, the Commission may wish to request that each of these measures be amended to include the following language:

> If this section is successfully challenged, any attorney's fees and costs shall be paid from the General Fund and the Commission's budget shall not be reduced accordingly.

In the alternative, this language could be broadened to apply to any challenge to a provision of the Political Reform Act.

Unfunded Costs
Each time a substantive new provision is added to the Political Reform Act, telephone and written advice requests and enforcement workload increase. It is estimated that these two companion measures will give rise to approximately $50,000 in costs for regulatory implementation, telephone and written advice, and enforcement workload. The Commission is urged to seek reimbursement for these costs, as it is this layering of unfunded new programs that forces the agency to prioritize advice and enforcement workload and, ultimately, to abandon some workload.

Recommendation: Support if amended to include funding and language related to lawsuits.

This bill would further the purposes of the Act—in particular, subdivision (b) of section 81002:

> The activities of lobbyists should be regulated and their finances disclosed *in order that improper influences will not be directed at public officials.* [Emphasis added.]

Staff recommends supporting AB 1784 if the bill is amended to include funding, and to shift attorneys' fees and costs awarded successful litigants to the General Fund.